

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF CALIFORNIA

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TONY HARRIS,

Plaintiff,

v.

CASE NO. CIV. S-04-1149 WBS PAN

MEMORANDUM AND ORDER

CHICO NISSAN, INC., RAY L.  
BOWEN, and DOES 1 through 10,

Defendants.

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Plaintiff Tony Harris alleges that defendants Chico Nissan, Inc., and its owner, Ray L. Bowen, violated Title III of the Americans with Disabilities Act ("ADA"), 42 U.S.C. §§ 12101-12300 and various California statutes. He now moves for summary judgment pursuant to Federal Rule of Civil Procedure 56.

I. Factual and Procedural Background

Plaintiff, who is partially paralyzed, purchased a Nissan Frontier pick-up from defendants at their place of business in Chico, Ca. (Harris Decl. ¶¶ 2-3; Pl.'s Statement of Undisputed Material Facts ¶ 6.) Based on his experience that day

1 and on a subsequent visit for maintenance on the truck, plaintiff  
2 filed suit against defendants under the ADA, alleging that  
3 "architectural barriers" denied him full and equal access to  
4 defendants' business. (Compl. ¶¶ 18-19.) Specifically,  
5 plaintiff claimed that he encountered: (1) accessible parking  
6 spaces taken up by unauthorized vehicles, (2) ramps that were too  
7 steep or too narrow, (3) a door that was too narrow, and (4) a  
8 men's restroom that lacked grab bars. (Swenson Decl. Ex. 1  
9 (Harris Dep. at 53-57).) He now moves for summary judgment on  
10 these four claims.

11 II. Discussion

12 Summary judgment is proper "if the pleadings,  
13 depositions, answers to interrogatories, and admissions on file,  
14 together with the affidavits, if any, show that there is no  
15 genuine issue as to any material fact and that the moving party  
16 is entitled to judgment as a matter of law." Fed. R. Civ. P.  
17 56(c). A material fact is one that could affect the outcome of  
18 the suit, and a genuine issue is one that could permit a  
19 reasonable jury to enter a verdict in the non-moving party's  
20 favor. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248  
21 (1986). Here, the facts regarding whether the four "barriers"  
22 identified by plaintiff actually violate the ADA, or even exist,  
23 are in dispute.

24 A. Parking Spaces

25 Regarding plaintiff's first claim that accessible  
26 parking spaces were taken up by defendants' unauthorized  
27 vehicles, defendants respond that plaintiff has no evidence of  
28 these alleged violations. They also offer testimony asserting

1 that they have never left company cars in accessible spaces.  
2 (Bowen Decl. ¶ 10; Swenson Decl. Ex. 3 (Carey Dep. at 11:8-12).)

3 B. Ramps

4 Likewise, defendants rebut plaintiff's second claim  
5 that ramps were too steep or too narrow by presenting a report  
6 from their own expert, Michael Boga. Boga's measurements  
7 contradict those of plaintiff's expert, Joseph Card. (Boga Decl.  
8 & Exs. 1-3.)

9 C. Narrow Door

10 Defendants present evidence that the allegedly too  
11 narrow door was only temporarily in place during a remodeling  
12 project and has since been removed. If defendants' claim is  
13 true, then plaintiff's ADA claim regarding the door is moot,  
14 because the ADA offers only injunctive relief for Title III  
15 violations. Wander v. Kaus, 304 F.3d 856, 858 (9th Cir. 2002).

16 D. Restrooms

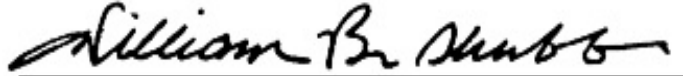
17 Finally, defendants respond to plaintiff's claim that  
18 the men's restroom lacked grab bars by explaining that the unisex  
19 restroom rather than the men's room was the one intended to be  
20 accessible to disabled patrons. Plaintiff selected the men's  
21 room, which was not marked with the international sign for  
22 accessibility, in lieu of the unisex bathroom, which was marked  
23 and arguably properly equipped.

24 In light of these factual disputes, plaintiff has not  
25 made the necessary showing to warrant summary judgment in his  
26 favor. Therefore, as plaintiff's counsel admitted at oral  
27 argument, plaintiff is not entitled to summary judgment.

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1 IT IS THEREFORE ORDERED that plaintiff's motion for  
2 summary judgment be, and the same hereby is, DENIED.<sup>1</sup>

3 DATED: December 1, 2005

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5 WILLIAM B. SHUBB

6 UNITED STATES DISTRICT JUDGE

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<sup>1</sup> Plaintiff's motion for summary judgment on his state law  
27 claims under the Unruh Civil Rights Act and Disabled Persons Act,  
28 which plaintiff argues "are wholly predicated upon a violation of  
the [ADA]," is thus also denied. (Pl.'s P. & A. in Supp. of Mot.  
for Summ. J. at 17.)